

CHARTER COMMISSION
CITY AND COUNTY OF HONOLULU

TUESDAY, MARCH 8, 2005
COUNCIL CHAMBERS
THIRD FLOOR, HONOLULU HALE
4:00 P.M.

MINUTES

Charter Commission Members Present:

Donn M. Takaki
Darolyn H. Lendio
Andrew I.T. Chang
Jared N. Kawashima
Jeffrey T. Mikulina
James C. Pacopac
Malcolm J. Tom
Jim Myers
Jan N. Sullivan
Stephen E. Meder

Charter Commission Members Absent:

Gerald L. Coffee
Amy H. Hirano
E. Gordon Grau

I. Call to Order

The meeting was called to order at 4:10 p.m., March 8, 2005, by Chair Pro Tempore Donn Takaki.

II. Election of Officers

The Chair Pro Tempore asked, if there were no objections, that item 3 on the agenda, election of officers, be taken first. Nominations for officers were solicited, first for the Chair.

Action: Commissioner Lendio moved to nominate Donn Takaki for the position of Chair of the Charter Commission. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Chair Takaki asked Deputy Corporation Counsel Lori Sunakoda to explain the nomination and election process for the Charter Commission election of officers. Deputy Corporation Counsel Sunakoda explained that it was their understanding that in order to be technically correct and consistent with the rules, they recommended that the Commission proceed or that the chair proceed to first take a motion for the nomination, then that would be seconded and then put to a vote, and that would secure or confirm the nomination of the particular appointee or nominee. At that point the second phase regarding the Election of Officers would proceed and then there would be a call for the motion from the floor as to whether to proceed on voting regarding the nomination of the particular appointee for the officer positions.

Further nominations for the office of chair were solicited. No further nominations were made for the office of chair.

Action: Commissioner Lendio moved to elect Donn Takaki for the office of Chair. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Nominations were then solicited for the office of Vice-Chair.

Action: Commissioner Lendio moved to nominate Jeff Mikulina for the office of Vice-Chair. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Further nominations for the office of Vice-Chair were solicited. No further nominations were made for the office of Vice-Chair.

Action: Commissioner Lendio moved to elect Jeff Mikulina for the office of Vice-Chair of the Charter Commission. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Nominations were then solicited for the office of Treasurer.

Action: Commissioner Jeff Mikulina moved to nominate Jim Myers for the office of Treasurer. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Further nominations for the office of Treasurer were solicited. No further nominations were made for the office of Treasurer.

Action: Commissioner Mikulina moved to elect Jim Myers for the office of Treasurer of the Charter Commission. Commissioner Lendio seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Nominations were then solicited for the office of Secretary. Commissioner Pacopac asked about the duties of the Secretary. Chair Takaki referred the question to the Rules Committee. Commissioner Kawashima noted that according to the rules, the secretary prepares the agenda and the staff will be handling the administrative details.

Action: Commissioner Lendio moved to nominate James Pacopac for the office of Secretary. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Further nominations for the office of Secretary were solicited. No further nominations were made for the office of Secretary.

Action: Commissioner Lendio moved to elect James Pacopac for the office of Secretary of the Charter Commission. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

III. Approval of Minutes

The Chair asked if everyone had a chance to review the December 20, 2004 meeting minutes.

Action: Commissioner Lendio moved to approve the minutes of the December 20, 2004 meeting. Commissioner Mikulina seconded the motion. Chair Takaki asked for any further discussion; there was none. All commissioners present voted in favor of the motion, and the motion was passed.

IV. Ratification of Prior Actions of the Commission

The Chair asked Corporation Counsel Diane Kawauchi to explain the proper procedure for ratifying the acts taken by the Commission at prior meetings. Deputy Corporation Counsel Kawauchi explained that there are items that were acted on in each of the three prior meetings. She expressed a concern that the manner in which the Commission addresses the ratification vote be clear so that if any member seeks to vote against the ratification, the vote would be clear. She gave as an example, the issue of whether the Commission wanted to take all of the items for the first meeting in one motion and vote as a group in lieu of taking each item individually. If there were any votes against any prior action, it should be clear which item the members voting against ratification are. Following the discussion, Commissioner Lendio asked whether it would be advisable to so move, and a motion was made.

Action: Commissioner Myers moved that the Commission ratify the prior actions of the Commission by meeting date, which would be December 20, 2004, January 31, 2005, and

February 8, 2005. Commissioner Lendio seconded. After a recess, all commissioners present voted in favor of the motion, and the motion was passed.

Action: Commissioner Myers moved that the Commission ratify the actions of the December 20, 2004 meeting. Commissioner Lendio seconded. The items covered by the motion were read into the record, which included:

- (1) Vote to proceed with meetings of the Charter Commission pending Council confirmation of the 13th member.
 - (a) Commission actions are to be ratified by the full 13-member Commission.
 - (b) Commission will proceed with election of chair pro tem and establishment of a Budget Subcommittee.
- (2) Election of Donn Takaki as chair pro tem.
- (3) Establishment of Budget Subcommittee renamed Personnel Subcommittee
 - (a) Donn Takaki, chair; members Darolyn Lendio and Jeff Mikulina
 - (b) Subcommittee is tasked to facilitate the Commission's preparation of a proposed budget for approval by the Council by investigation budgets of prior Charter Commission, gathering information on personnel matters including recruiting, selection and hiring of Commission staff, and report their findings at a subsequent meeting of the Commission.
- (4) Deferral of the election of officers.
- (5) Deferral of adoption of rules of practice and procedure

All commissioners present voted in favor of the motion, and the motion was passed.

Action: Commissioner Lendio moved that the Commission ratify the prior actions voted upon in the January 31, 2005 meeting. The items and actions were read, which included:

- 1) Deferral of discussion of pending Council resolutions to initiate charter amendments pending adoption of Commission rules of practice and procedure.
- 2) Establishment of subcommittees, chairs and members.
 - (a) Personnel (formerly Budget): Chair Donn Takaki; members, Darolyn Lendio, Jeff Mikulina.
 - (b) Budget: Chair James Myers; Andy Chang, Darolyn Lendio.
 - (c) Rules: Chair Jared Kawashima; members Malcolm Tom, Jeff Mikulina.
 - (d) Calendar: Chair Jan Sullivan; members Amy Hirano, Gordon Grau.

- 3) Approval of Report of the Personnel Subcommittee.
- 4) Calendar Subcommittee is tasked with reviewing the Council proposed timetable dated January 11, 2005, for actions of the Commission.
- 5) Subcommittees on Budget and Personnel are to meet jointly to research a proposed Commission budget and report its findings at a subsequent meeting of the Commission.

The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Action: Commissioner Mikulina moved that the Commission ratify the prior actions voted upon in the February 8, 2005 meeting. The items and actions were read, which included:

- 1) Approval of proposed Charter Commission budget
- 2) Approval of the amendment of the proposed budget to include \$100,000 for legal fees in May 2006.
- 3) Approval regarding notification of the Commission's interest in leasing office space located at 820 South Beretania Street.
- 4) Approval of report of the Personnel Subcommittee dated February 8, 2005.
- 5) Establishment of monthly commission meetings to be held on the second Tuesday every month at 4:00 p.m.

Commissioner Lendio seconded the motion. Discussion on the motion was held. Commissioner Myers asked why the legal fees item specified May 2006. There was a question as to why the Commission would have specified a month. Commissioner Myers recalled that the Commission only specified putting the legal fees in a fiscal year. It was suggested that this item be amended.

Action: Commissioner Myers moved to amend item No. 2 from the February 8, 2005 meeting to delete reference to the month of May to simply read, "Approval of the amendment of the proposed budget to include \$100,000 for legal fees in 2006." Commissioner Lendio seconded the motion. There was no further discussion upon solicitation from Chair Takaki. All commissioners present voted in favor of the motion, and the motion was passed.

Action: It was moved and seconded that the Third Meeting of February 8, 2005, with the amendment of item 2, be ratified. All commissioners present voted in favor of the motion, and the motion was passed.

V. Subcommittee Reports

Report of Budget Committee

There was no further report. Commissioner Myers noted that the Council had received the budget and believed that the Commission would be asked to testify on the 17th of March.

Report of Committee on Personnel

Commissioner Lendio reported that the advertisement for the executive administrator of the appeared in the Sunday Star Bulletin dated March 6, 2005, and that the advertisement was also on-line. Next Sunday March 13th the position will be advertised in the Honolulu Advertiser, Sunday edition.

Commissioner Mikulina asked if the resumes are going to someone at Council Services.

Commissioner Lendio responded that they believed that the resumes were going to Clayton Wong of the City Council, that he was collecting them and would be mailing them in PDF format to the Committee as he received them.

Commissioner Sullivan asked for the Committee's best guess as to the time frame for selecting an Executive Administrator.

Commissioner Lendio responded that if the Committee can interview and select someone by the next Charter Commission meeting then the whole Commission could vote on it at the April meeting.

Commissioner Myers asked whether it was required that the entire Charter Commission vote on hiring of the administrator.

Commissioner Myers asked if the hiring could be delegated to the Personnel Subcommittee.

Chair Takaki thought that the Personnel Committee report that was previously submitted and ratified specifically addressed that issue, and that the task had already been delegated to the Personnel Committee and Commission Chair.

Action: Commissioner Myers made a motion that the Commission delegate responsibility of hiring the Executive Administrator to the Personnel Committee. Commissioner Lendio seconded the motion. There was discussion on the motion.

Chair Takaki clarified that the report that was adopted, stated that the final interview would be done, the initial interview and screening would be done by the Personnel

Subcommittee, and that the final interview would be done by the chair; it did not state that the selection would be done by the chair of the committee.

Commissioner Lendio asked whether, from the Corporation Counsel's standpoint, there was there any Sunshine Law issue regarding hiring without an action during a scheduled meeting by the Commission. Commissioner Lendio also asked if it would be sufficient under the Sunshine Law if the Charter Commission at the April meeting ratifies the selection by the Personnel Subcommittee.

Deputy Corporation Kawauchi replied that the Sunshine Law allows the subcommittees to meet without posting of agenda as long as there's less than quorum but the law states that the committee will meet, then they present their findings and recommendations to the Commission at a subsequent meeting, and that is when the Commission can take action. She further explained that two meetings would be needed in essence; one meeting for the presentation of the findings and the second meeting for decision-making. She also recommended that the whole commission be involved, because the hiring is an action of the Commission.

Chair Takaki asked to clarify, whether Corporation Counsel was recommending that the Personnel Subcommittee review the applicants, the chair can do the final interview, however, if someone is selected by the Personnel Subcommittee and approved by the chair, that person will be discussed at the next Charter Commission meeting as the recommendation from the Personnel Subcommittee.

Deputy Corporation Counsel Kawauchi replied that that was correct, and then at the next meeting the Commission would adopt the recommendation.

Commissioner Lendio asked if the Commission would be able to enter into a personal contract with the candidate dated March 30 subsequent to the approval of the Charter Commission in May. Deputy Corporation Counsel Kawauchi gave some comments on the issue, and summarized that if that was something that the Commission wanted to do, the matter would have to be researched.

Chair Takaki again asked Deputy Corporation Counsel Kawauchi, to clarify that from her recommendation, it would take at least two meetings from the time that the Personnel Subcommittee recommends the executive administrator until the time we can actually hire the executive administrator. Deputy Corporation Counsel Kawauchi replied in the affirmative.

Commissioner Chang asked what kind of procedural relations would be encountered if the Commission had an emergency meeting, so that there would not be so many delays.

Deputy Corporation Counsel Kawauchi responded that there was no deadline, and that the Commission could meet every week or every two weeks if they wanted to.

It was asked if two meetings could be called at one time. Kawauchi responded that there was a six-day notice requirement. It was asked if the Commission could post today for a meeting six days from now and one seven days from now. Kawauchi responded that this could be done, as long as there were two separate postings.

Chair Takaki asked, again to clarify, if the Personnel Committee makes a recommendation on their selection and the selection was brought up, in April, beginning of April that the Commission could then post for six days later to make the ratification of their choice. This would allow for approval six days after the Committee made their recommendation, not twelve.

Chair Takaki went back to Commissioner Sullivan's first question about that target date and with this information, and commented that he thought that the Commission would probably be shooting for about April 15 or so. He noted that the next scheduled meeting was April 12, and that one week after that would be April 19; so that would be the date that the Commission would be shooting for to approve the hiring of the Executive Administrator.

Following discussion on the motion to delegate responsibility of hiring the Executive Administrator to the Personnel Committee, the motion was withdrawn.

Report of Rules Committee

Commissioner Kawashima, on behalf of the Rules Subcommittee, reported that the Committee reviewed the 1992 rules, the Charter Commission rules and the 1998 Charter Commission rules and with the much appreciated assistance of OCS and Corporation Counsel, the committee did meet and submit the draft rules for the 2005 Charter Commission which was distributed at the meeting. The Rules Committee recommended that these rules be adopted subject to or once there was appropriate review by the Commission. Commissioner Kawashima stated that he believed that there has been appropriate review by the Commission.

Chair Takaki asked for clarification, how the Commission would receive proposed amendments, and if there was a committee that would be in charge of the hearing proposed amendments by the public.

Commissioner Kawashima responded that the Committee on Submission and Information is responsible for that. He referred to rule 3, and noted that there is a form attached to the back of the draft rules and this form basically would be required to be used for any proposed amendments.

Chair Takaki asked who would establish the timeline and deadline to submit, noting that he believed that the Commission would not want to accept proposed amendments two days before the ballot needs to be printed.

Commissioner Kawashima responded that in discussion with Corporation Counsel, he believed that the calendar committee would be setting those deadlines.

Chair Takaki asked whether the Calendar Committee would also be setting various deadlines as to when the Commission would receive the proposed amendments, when the Commission would review the proposed amendments, and then when the Commission would accept public testimony. Commissioner Kawashima replied in the affirmative.

Report of Calendar Committee

Commissioner Sullivan, Chair of the Calendar Committee, stated that she had started to look at what would be required for the Calendar Subcommittee. She circulated a draft of her initial report. She noted that when she started to look at the deadlines and the rules, and that it became apparent to her that that it is impossible to look at how to calendar something without covering the issues that are actually in Committee on Submission and Information.

Commissioner Sullivan noted further that the issues are related. She explained that some of the dates at the end are a little more concrete because the deadlines for publication and notice are known in light of the November election, but as the dates get closer, there are many decisions that the Commission will have to make on what kind of public review process to have, and those are the kind of things the Commission has to start thinking about as they need to be brought before the Commission for decision and discussion. Commissioner Sullivan stated that she was bringing the issues up at this time because she would like to recommend that the Commission consider consolidating the Calendar Committee with the Committee on Submission and Information.

Chair Takaki noted that he thought that the suggestions were good, but that he believed that under the direction the Commission had been given, the Commission could review the written reports submitted by both the Rules Subcommittee and Calendar Subcommittee, but the Commission could not vote to accept these reports until the next Charter Commission meeting. The Commissioners could take the reports with them, and review them for discussion and hopefully action at the next meeting.

VI. Public Testimony

The Chair solicited public testimony on any agenda item. None was submitted or offered.

VII. Next Meeting Schedule

The Chair announced that he believed that the Mayor's office is trying to coordinate Sunshine Law briefings for the different commissions, so the Commission would wait for notification as to when these briefings would occur. Corporation Counsel Diane Kawauchi was asked to comment on a guide to open meetings that she passed out to all members present.

Deputy Corporation Counsel Kawauchi explained that she obtained copies of these documents from the State Office of Information Practices, which would be the office giving the Sunshine Law training. She briefly summarized the contents of the handout.

Chair Takaki asked about email discussions, because in the business world that seems to be common practice.

Kawauchi responded that there is a sunshine law requirement when more than 3 of you meet so your subcommittees are aptly numbered to be 3 members only and they can meet under the sunshine law without posting and a receipt of public testimony and it would be acceptable for the three members to confer via phone or email without violating the sunshine law. However, she cautioned not do a phone conference call with four people or to email everybody in the Commission.

The next meeting was set for April 12, 2005, at 4:00 p.m., in Council Chambers. The Chair noted that there may be another meeting scheduled one week after that, hopefully to confirm the candidate for the Executive Administrator position.

VIII. Adjournment

Commissioner Lendio moved to adjourn the meeting. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed. The meeting was adjourned at [REDACTED] p.m.